UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

OSRAM SYLVANIA, INC. [1]/

Employer

and Case 9-RC-17845

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION 92, AFL-CIO

Petitioner

ACTING REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer is engaged in the business of manufacturing and distributing glass. The Petitioner has filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit comprised of all production and maintenance employees employed by the Employer at its facility located at 1000 Tyrone Pike, Versailles, Kentucky, including plant clerical employees and shipping and receiving employees; but excluding office clerical employees, employees employed by a temporary agency, and all professional employees, guards and supervisors as defined in the Act. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

A hearing officer of the Board held a hearing on the issues raised by the petition and the Employer and Petitioner filed briefs with me. The parties agree that the above-described unit (the Unit) of essentially production and maintenance employees is an appropriate unit. The parties disagree as to the labor organization status of the Petitioner; the Employer contending that the Petitioner is not a labor organization within the meaning of the Act. In support of its position, the Employer notes that the petitioning local union has yet to be granted a charter, adopt bylaws or formally admit employees to membership; points to the lack of a history of the petitioning local union dealing with any employer with respect to employees' terms and conditions of employment; and argues that employees cannot possibly participate in a local which does not exist.

I have carefully considered the evidence and the arguments presented by the parties on the labor organization status of the Petitioner, which is the only issue in dispute. I have concluded, as discussed below, that the Petitioner meets the elementary requirements of

[1]/ The name of the Employer appears in conformity with a stipulation of the parties at the hearing.

Section 2(5) of the Act to be considered a labor organization in that it is an organization in which employees on its organizing committee participate and which was formed to represent employees for the purpose of dealing with the Employer with respect to terms and conditions of employment of the Unit. Accordingly, I find that Petitioner is a labor organization within the meaning of the Act.

To provide a context for my discussion of the issue, I will first provide an overview of the facts relating to the labor organization status of the Petitioner. I will then present the analysis supporting my conclusion.

I. OVERVIEW OF FACTS RELATED TO PETITIONER'S LABOR ORGANIZATION STATUS

The Petitioner in this matter is set forth as "International Brotherhood of Electrical Workers, Local Union 92, AFL-CIO." Although the parties to this proceeding stipulated that the International Brotherhood of Electrical Workers (the International) is a labor organization within the meaning of the Act, as noted above, the Employer questions the labor organization status of Local Union 92.

Approximately 40 employees of the estimated 213 unit employees comprise the organizing committee of the Petitioner. Apparently, at least certain members of this committee requested the formation of a separate local to represent the Unit. Although the local has yet to be chartered or formally accept or swear in any employees as members, which will not take place unless and until the Petitioner is successful in the election, Local Union 92 has been "flagged" as the Unit's designated representative by the International. Moreover, a district organizer of the International Union has made a request of the Employer that the Employer recognize Local Union 92 for purposes of collective bargaining. If successful in the organizing campaign, it is intended that Local Union 92 will negotiate with the Employer over employees' terms and conditions of employment.

The process for the formation and operation of local unions is set forth in detail in the "International Brotherhood of Electrical Workers – Constitution and Rules for Locals and Councils under its Jurisdiction." Article XIII, Section 1 of the Constitution and Rules states:

> A L.U. [local union] may be organized by not less than ten (10) electrical workers or employees coming under the I.B.E.W.'s jurisdiction.

Once this requirement is met, the International Secretary/Treasurer may grant a charter upon authorization by the International President.

The Employer notes that there appears to be no constitutional procedure providing for the "flagging" of a local. Thus, the Employer argues, what apparently has occurred is the International President has merely reserved the designation of Local Union 92 for a local that may come into existence if the Employer's employees "vote to join the IBEW."

II. THE LAW AND ITS APPLICATION

Section 2(5) of the Act provides the following definition of "labor organization":

> Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The statutory definition of a "labor organization" has long been interpreted broadly. See, *Electromation, Inc.*, 309 NLRB 990, 993-94 (1992), enf'd. 35 F.3d 1148 (7th Cir. 1994). To fall within the definition of a "labor organization," the Board has held that employees must participate in the organization and it must exist for the purpose, in whole or in part, of dealing with employers. *Alto Plastic Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). Under this definition, an incipient union that has not yet actually represented employees may, nevertheless, be accorded Section 2(5) status if it was *formed* for the purpose of representing employees. *Coinmach Laundry Corp.*, 337 NLRB No. 193 (2002); *The East Dayton Tool & Die Company*, 194 NLRB 266 (1971); *Butler Manufacturing Company*, 167 NLRB 308 (1967). Contrary to the Employer's assertions, a finding of labor organization status does not require proof of the entity in question having ever "dealt with" an employer. *Coinmach Laundry*, supra; *Armco, Inc*., 271 NLRB 350 (1984); *Steiner-Liff Textile Products Co.*, 259 NLRB 1064, 1065 (1982). Rather, it is the *intent* of the organization that is critical in ascertaining labor organization status, regardless of the progress of the organization's development and what activities the organization has actually performed. *Edward A. Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980). Indeed, even if such an organization becomes inactive without ever having represented employees, it is still deemed to have been a statutory labor organization if its organizational attempts "[c]learly . . . envisaged participation by employees," and if it existed "for the statutory purposes although they never came to fruition." *Comet Rice Mills*, 195 NLRB 671, 674 (1972). Moreover, "structural formalities are not prerequisites to labor organization status." *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution, by-laws, meetings, or filings with the Department of Labor); *Butler*, supra, at 308 (no constitution, bylaws, dues or initiation fees); *East Dayton*, supra, at 266 (no constitution or officers). Thus the absence of a constitution or bylaws is an irrelevant consideration in analyzing whether a petitioner is a labor organization within the meaning of the Act. *Coinmach Laundry*, supra at 3.

Based on the evidence presented at the hearing, I find that the Petitioner is a labor organization within the meaning of the Act. Although, as of the hearing date, the Petitioner lacked certain formal trappings, it is well established that such structural formalities are not prerequisites to labor organization status within the broad meaning of Section 2(5) of the Act. I recognize that Local Union 92 has yet to conform to the requirements of the International's Constitution and Rules for obtaining a charter and for admitting employees to membership. However, such requirements appear to be a mere "red herring" in the consideration of the issue at hand; i.e., focusing on them presents simply a distraction from a proper analysis of the Act's

requirements for labor organization status. Thus, whether these internal requirements are met or not does not detract from the fact the Petitioner is an organization in which employees participate (at least through the organizing committee and employee action resulting in the Local Union 92 designation), and which was formed to represent employees for the purpose of representing employees with regard to their wages, hours, and working conditions. The Act requires nothing more.

In addition, although Local Union 92 has yet to adopted its own by-laws, I note that the International's Constitution provides a detailed framework as to how locals are to operate; setting forth such direction as what local officers are to exist (and who may be removed by the International President under certain circumstances), how officers are to be selected, the manner in which meetings are to be conducted by the local, etc. Thus, the organizational/structural aspects of the Local are for the most part pre-ordained by the International's constitution. [2]/ In reaching my conclusion that the Petitioner is a labor organization, I note that the Employer has not cited any Board precedent to the contrary.

III. EXCLUSIONS FROM THE UNIT

The parties agree, the record shows, and I find that the following persons are supervisors within the meaning of the Act: Tom Hackett, plant manager; David Burch, manufacturing superintendent; Roger McDowell, manufacturing superintendent; Bill Bean, general foreman; Roy Sparks, general foreman; Ted Irwin, maintenance foreman; Larry Hooper, electrical supervisor; Ronny Hume, facilities manager; Nancy Skiba, human resources manager; Jack Ambrose, materials manager; and Bruce Finney, quality manager. Accordingly, I will exclude them from the unit.

The parties further agree, the record shows, and I find that there are ten unnamed shift production supervisors who are supervisors with the meaning of the Act. I have, therefore, excluded this category of employee from the unit in which I am directing an election.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

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[2]/ Indeed, the International's control of local affairs includes the constitutional mandate that any collective-bargaining agreement attained by a local must include the caveat that the local union is "a part of the" International. Thus, it appears that a local may be merely one visage through which the International represents employees and it is uncontested that the International is itself a labor organization. The Employer, in its brief, argues that if the "IBEW" is in fact the Petitioner – this office should recognize that it is "the true petitioner in this action." I do not agree that the International is the "Petitioner" here. Contrary to the Employer's argument in its brief, the International's procedures for establishing and controlling locals does not detract from Local 92's status as a labor organization. Moreover, I note that the Employer does not claim that there is any unlawful subtrifuge intended. Cf., *Coinmach Laundry*, supra at 4.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by the Employer at its facility located at 1000 Tyrone Pike, Versailles, Kentucky, including plant clerical employees and shipping and receiving employees; but excluding office clerical employees, employees employed by a temporary agency, and all professional employees, guards and supervisors, including shift production supervisors, as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Brotherhood of Electrical Workers, Local Union 92, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less then 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and

(3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **October 30, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request

must be received by the Board in Washington by 5 p.m., EST on **November 6, 2003**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 23rd day of October 2003.

/s/ Earl L. Ledford, Acting Regional Director

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